



Duquesne Light

Our Energy...Your Power

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Gary A. Jack
Assistant General Counsel

July 13, 2011

VIA E-FILING

Ms. Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

**Re: Notice of Reconsideration:
Interim Guidelines for Eligible Customer Lists;
PPL Electric Utilities Corporation Retail Markets;
Petition of Duquesne Light Company for Approval of Default Service
Plan for the Period January 1, 2011 through May 31, 2013**

Docket Nos. M-2010-2183412, M-2009-2104271, P-2009-2135500

Dear Secretary Chiavetta:

Enclosed for filing are Duquesne Light Company's Comments in the above-referenced proceeding.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'G. Jack', written over a printed name.

Gary A. Jack

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company for :
Approval of Default Service Plan for the : Docket No. P-2009-2135500
Period from January 1, 2011 Through :
May 31, 2013

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the comments of Duquesne Light Company in the above-referenced proceeding have been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant):

VIA FIRST-CLASS MAIL AND/OR E-MAIL

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Dated July 13, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Interim Guidelines for Eligible Customer Lists	:	Docket Nos. M-2010-2183412 :
PPL Electric Utilities Corporation Retail Markets	:	M-2009-2104271 :
Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 through May 31, 2013	:	P-2009-2135500 : :

**COMMENTS OF
DUQUESNE LIGHT COMPANY**

I. Introduction and Background

On November 12, 2010, the Commission adopted an order (“November 12 Order”) that established interim guidelines designed to produce more uniformity in the type of customer information provided by Electric Distribution Companies (“EDCs”) in their Eligible Customer Lists (“ECL”) which are then made available to Electric Generation Suppliers (“EGSs”). The November 12 Order was appealed by the Office of Consumer Advocate (“OCA”) and the Pennsylvania Coalition Against Domestic Violence (“PCADV”). The OCA claimed the November 12 Order violated the Pennsylvania Constitution and the Public Utility Code because the order prevented customers from restricting all personal and private customer information from release to EGSs, even if customers object to such release. Similarly, the PCADV alleged that

requiring customers to identify themselves as victims of abuse in order to restrict the release of customer information violated the constitutional right to privacy of those customers and the PCADV objected to the manner of obtaining customer consent, in that opt-out program for information disclosure violates the individuals' right to privacy.

On December 29, 2010, PCADV filed an Application for Supersedeas seeking to stay the November 12 Order and OCA filed an answer supporting the request for a stay. In the OCA's Petition for Review of the November 12 Order, it posits that all electric utility customers have the right to restrict the release of all personal information in possession of regulated utilities. OCA Petition for Review at 3-4. Similarly, the PCADV raises concerns in its Petition for Review involving not only the right to privacy but the harm that can ensue if that right is taken away. PCADV asserts that revealing confidential information could actually endanger a person in a domestic violence program or a victim of domestic violence. PCADV Petition for Review at 5-6. PCADV also alleges that an opt-in policy is the most protective of a customer's right to privacy guaranteed under the United States and Pennsylvania Constitutions. *Id.* at 4.

Dominion Retail, Inc. ("Dominion") and the Retail Energy Supply Association ("RESA") filed Answers opposing the request for stay. Following a hearing on the Application, the Commonwealth Court granted the request for a stay, stating the supersedeas "is granted to the extent that the request supersedes will maintain the *status quo*."

On March 8, 2011, the Commission asked the Commonwealth Court to remand jurisdiction back to the Commission, stating that the public interest would be served by allowing the Commission to reconsider its determinations and, after notice and

opportunity to be heard, produce a new order that strikes an appropriate and lawful balance between customer privacy rights and the Commission's obligations under Chapter 28 of the Public Utility Code. The Commonwealth Court granted the Commission's application and remanded jurisdiction back to the Commission on April 28, 2011.

On June 13, 2011, the Commission entered a Notice of Reconsideration ("Notice of Reconsideration"), where the Commission will reconsider the determinations in its November 12 Order and, in particular, the customer privacy issues raised in the OCA and PCADV petitions for review regarding the release of customer information and the extent of customer information that can be withheld. Additionally, in order to achieve statewide uniformity in its resolution of the various issues regarding the ECL, the Commission, as part of the Notice of Reconsideration, will also reconsider its earlier orders that established ECL parameters for PPL Electric Utilities and Duquesne Light Company.¹ This is needed because for PPL and Duquesne since the issues regarding the ECL were addressed selectively in individual cases those companies had before the Commission. In the Commission's Order on Duquesne's Default Service Plan for January 1, 2011-May 31, 2013 ("Default Service Order"), the Commission directed Duquesne to release customer information to all EGSSs such as customer name, account number, rate class and sub-class, service address and billing address.² The Commission also noted that

¹ *PPL Electric Utilities Corporation Retail Market*, Docket No. M-2009-2104271, Order entered October 22, 2009 and *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 through May 31, 2013*, Docket No. P-2009-2135500, Order entered July 30, 2010.

² *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 through May 31, 2013*, Docket No. P-2009-2135500, Order entered July 30, 2010.

Duquesne's customers could restrict the release of (1) historical billing data, (2) telephone number; and/or (3) service address. *Id.*

Duquesne Light Company ("Duquesne" or "Company") offers the following comments to the Commission's Notice of Consideration.

II. Comments

Duquesne's Position on the Release of Customer Information

Duquesne believes that all of its customers should have the right and choice to either have their customer information released to EGS or to restrict the release of that information about themselves and their account to others. Duquesne believes that it, and the Commission, should honor the wishes of customers on the release of their customer information – even if that request is not to release any information to third parties. Alternatively, if customers wish to have some information released and other information not released, that wish should be honored and carried out as well.

Second, the current methodology for customers is an opt-out process. If customers do not opt-out of the proposed information release, the information is conveyed by the EDC to all EGSs. The Commission should consider whether an opt-in process is preferable. The beginning premise would be that customer information would not be shared with others unless the customer consents (opt-in). Arguments can be made for both positions, but it should not be automatically accepted that opt-out is the process to use.

Duquesne has previously commented to this effect in comments to the Commission on the ECL and in Duquesne's POLR V proceeding.³ Its position has not changed. Duquesne supports the procedure that EGSs should have access to customer information that is not restricted in order to foster retail competition. Duquesne Light currently provides a thorough and informative ECL, which is available to registered EGSs to utilize in their business practices. Duquesne believes that the information provided on its ECL is conducive and helpful for EGS marketing purposes. The Commission can and needs to strike the right balance of the EGS's desire for access to data with an individual's right to control his customer information.

Status of Duquesne's Eligible Customer List

Following the Commission's order in Duquesne's POLR V proceeding on the ECL issues,⁴ Duquesne implemented a process to instruct its customers about the release of customer information to EGSs by sending each customer a letter with options to release or restrict the limited information the Commission allowed in the POLR V proceeding. (See Attachment A). The results were interesting. The Company received what it feels was a very high response rate from customers on the issue. Approximately 16.5% of all Duquesne customers (or about 89,000 customers) elected that they wanted Duquesne to withhold all or some information from EGS marketers. The number of

³ Comments of Duquesne Light Company, Re: Interim Guidelines for Eligible Customer Lists, Docket No. M-2010-2183412; Comments of Duquesne Light Company, Re: *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 through May 31, 2013*, Docket No. P-2009-2135500

⁴ *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 through May 31, 2013*, Docket No. P-2009-2135500, Order entered July 30, 2010.

customers is very significant, in Duquesne's view, for several reasons. One, there was a fair amount of effort for a customer to read the mailing communication on the issue and then take the time and effort to fill out and send back the card to Duquesne with their own postage indicating they wanted information not released. (For those customers who did not return a card or for any reason took no action, all information is released by Duquesne to all EGSs.) Hence a significant portion of Duquesne's customers believes this is an important enough issue for them that they took the effort to try to assure their information was not released. This could have been for a host of reasons for their decision, such as privacy or the desire not to be bothered with marketing contacts. Duquesne believes the choice made by these customers should be honored.

Second, the 16.5% of Duquesne customers electing to opt-out of the release of customer information is significant because it appears to be a real shift in importance that customers place on this issue. The last time Duquesne polled its customers on the issue and allowed them the right to restrict information was around 2002 when customer choice began in the Duquesne territory.⁵ Based on a notice Duquesne sent to its customers, only about 3% of Duquesne customers responded that they wanted to opt-out and restrict their customer information to EGSs. Now, 10 years later, the percentage of customers wanting Duquesne to restrict dissemination is five times higher (please see attached Attachment B for the results of the 2010 customer inquiry). Duquesne believes its customers have a better understanding and are better educated than ten years ago and

⁵ The choice for customers in 2002 was release all information or do not release any information. There was not an option to release some information and restrict other information.

that there is clearly a significant portion of customers who do not want their personal account information disseminated.

Customer Phone Numbers

In the Duquesne Default Service Order, the Commission directed Duquesne to permit customers to opt out of providing historical billing data, service address, and telephone numbers, consistent with the Commission's customer privacy and protection rules. Default Service Order at 8. Accordingly, Duquesne currently provides the customer phone number through the ECL, unless a customer restricts it. Duquesne understands that some other EDCs do not provide phone numbers as part of their primary information transfer to EGSs. In Duquesne's view, phone numbers should not be primary information conveyed. Duquesne respectfully requests that the Commission clarify that phone numbers should not be supplied as part of the ECL. This will ensure consistency across EDCs in the Commonwealth.

Recommendation

Duquesne respectfully requests that the Commission approve new options for customers with regard to their election of dissemination of their personal account information. Duquesne suggests the following options be provided to customers: (1) Do not release any customer information; (2) Release all customer information; or (3) Release customer information with noted exceptions (the customer would be asked to write-in the information they want released or do not want released).

Primary and Secondary Customer Information

Duquesne believes there are two groupings of customer information – primary baseline information and secondary information. The primary information would be the customer name, account number, rate class and sub-class, service address and billing address. The secondary information would be the more detailed information such as the peak load contribution, load factor, loss factor and monthly on-peak and off-peak demands. This proceeding before the Commission should address the primary customer information. Duquesne is concerned that customers who agree to release their primary information do not realize that EGSs will also be receiving selective information such as peak load contribution, load factor, and monthly demands. Some of this is competitively sensitive information for industrial and commercial customers. Based on discussions with other EDCs, Duquesne understands that there is a lack of consistency by EDCs on the secondary information provided on the ECL due, in part, to different system capabilities. Because of the inconsistencies and customers not realizing such competitively sensitive information is or may be released when they do not restrict their primary information, Duquesne believes the Commission should address only primary information to be provided on the ECL. The secondary information is not needed for initial marketing purposes, because if the EGS needs such information, the customer can release the information directly to the EGS or the customer can authorize the EDC to release the information. The Commission should consider not being involved in this type of detail for the ECL since different customers have different preferences on release of the secondary information.

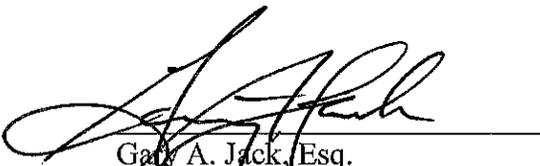
III. Conclusion

Duquesne believes that customers should be permitted to make the decision on whether or not to release their customer account information to EGS entities, especially since the EGS are not under full PUC regulatory control and subject to all the consumer protection standards. If customers desire all of their information to be disseminated to EGSs, that should be honored. Likewise, if customers do not want to have their account information released, that decision should be respected. The decision should be the customer's choice --- not the EDC, the EGS, or government. By giving the customer the choice to restrict all or a part of their customer information, the concerns raised by the OCA, PCADV and others on appeal and in comments can be addressed. Others should not substitute their judgment on dissemination of customer information over that of the individual's right or desire to choose whether they want their information disseminated to third parties.

Duquesne Light Company thanks the Commission for the opportunity to comment on this matter, and hopes that the information provided herein will assist the Commission in its reconsideration of customer privacy issues on the Eligible Customer List.

Respectfully Submitted,

Duquesne Light Company



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Dated: July 13, 2011

Side 1



As part of the Pennsylvania Customer Choice Program, you have the right to have all of your account information released to electric generation suppliers, or you can restrict your phone number, service address, and/or electric usage. If we do not hear from you, we will continue to release all information to electric suppliers.

Please notify us of your choice by using one of the following options:

- Visit www.duquesnelight.com and select Restrict Customer Information in the My Account area.
- Complete the form on the back and return to: Duquesne Light Company, Mail Drop 6-1, PO Box 1930, Pittsburgh, PA 15230-1930.

Form D90-00177B (9/10)

Side 2

- I do NOT want Duquesne Light to release my phone number, service address & electric usage information to all electric generation suppliers.
- Of the three items I can exclude from release, I want to exclude only (please check applicable):
 - phone number service address electric usage
- I permit Duquesne Light to release all information, including my phone number, service address & electric usage information to all electric generation suppliers.

Your Name (PLEASE PRINT): _____

Account Street Address: _____

City: _____ State: PA ZIP: _____

Duquesne Light Account Number: - - -

Your Signature: _____ Date: _____

Duquesne Light Company Restriction Counts For All Customer Classes**Current Number of Customers Restricting Information**

		07-01-2011	
code restrict data	CURRENT RESTRICTION OPTIONS	Active customer count	Percent of total active customers
	no restrictions	489473	83.58%
A	restrict usage & phone number & service address	79672	13.60%
B	restrict address	221	0.04%
C	restrict phone & usage	1239	0.21%
D	restrict address & usage	393	0.07%
I	restrict phone number & service address	1141	0.19%
P	restrict phone	13268	2.27%
U	restrict usage	236	0.04%
	TOTAL CUSTOMERS	585643	

2002 Poll on Number of Customers Restricting Information

code restrict data	PRIOR RESTRICTION OPTIONS		
	no restrictions	568986	96.91%
U	restrict usage	2499	0.43%
A	restrict all	15640	2.66%
	TOTAL CUSTOMERS	587125	